

No.

Q. B.--APPEAL SIDE

ARTHUR C. WEBSTER,

Plaintiff Below.

vs.

vs.

THE GRAND TRUNK RAILWAY COMPANY,

Defendants Below.

ACCORDANT.

RESPONDENT'S CASE.

ADVISED by REGISTER, CHICAGO,
Attorneys for Respondent.

Superior Court.

ARTHUR C. WEBSTER,

Plaintiff.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

Defendants.

Arthur C. Webster, formerly of the City of Montreal, in the District of Montreal, at present residing in the City of Quebec, in the District of Quebec, Esquire, Plaintiff, complains of the Grand Trunk Railway Company of Canada, Defendants and declares:—

That at all and every the times and periods herein after mentioned the said Defendant was a Body Politic and Corporate, duly incorporated as such by virtue of Public Act of this Province;

That on the first day of October eighteen hundred and fifty-three, the said Plaintiff was and for many months previously had been possessed of two hundred and sixty eight shares, of twenty-five pounds sterling each in the Capital Stock of the said Company Defendants, as the owner and proprietor thereof.

That on the said first day of October eighteen hundred and fifty-three, the said Plaintiff being indebted to a certain copartnership firm then carrying on business in the said City of Montreal, under the name or style of Lemesurier, Routh and Company, in the sum of one thousand four hundred and three pounds, fifteen shillings and seven pence, currency, for so much money loaned to him by the said firm, and having engaged to transfer to such firm fifty-eight of the said two hundred and sixty-eight shares, as collateral security for the due payment of such indebtedness and in order that the said firm might realise the amount so due to them by the Plaintiff out of the sale of the said fifty-eight shares, he, the said Plaintiff, did in due form of law, by an instrument in writing executed in duplicate on the said first day of October eighteen hundred and fifty-three, transfer and sell to the said Lemesurier, Routh and Company the aforesaid fifty-eight shares in the Capital Stock of the said Company Defendants, the whole on the understanding that the surplus of the proceeds of the sale by the said firm of the said fifty-eight shares, after deduction of the Plaintiff's said debt should be paid by them to the said Plaintiff.

That thereupon the said Lemesurier, Routh and Company duly demanded of the said Company Defendants to transfer the said fifty-eight shares of Stock, on the Books of the said Company Defendants to them the said Lemesurier, Routh and Company and then and there also presented to the said Company Defendants, the said transfer and offered to surrendered the same on the due execution of such transfer aforesaid on the Books of the said Company; but the said Company Defendants, wholly neglected and refused to execute such transfer on the Books of the said Company; Whereupon afterwards, to wit: on the twenty-fourth day of December eighteen hundred and fifty-three, (the said firm having in the mean time made similar verbal applications on several occasions but without effect) through the ministry of J. J. Gibb and his Colleague, Notaries Public, the said Lemesurier, Routh and Company, did formally reiterate their said demand, to have the said fifty-eight shares transferred as aforesaid, on the Books of the said Company Defendants, and did also then and there re-exhibit and re-offer to surrender the said transfer as aforesaid, but the said Company Defendants still persisted in refusing to transfer the said fifty-eight shares on the Books of the said Company, and thereupon the said firm duly protested against the said Company for all costs, losses, damages, injuries and hurts had, suffered and sustained or which might thereafter be had suffered and sustained in consequence of the premises. As the whole will more fully appear by reference to an authentic copy of such Notarial demand and Protest herewith produced and filed, and to which the said Plaintiff particularly refers as forming part of these presents.

That on the twenty-fifth day of November eighteen hundred and fifty-three, the said Plaintiff being indebted to "The City and District Savings Bank of Montreal," in the sum of four thousand seven hundred and forty pounds, nine shillings and eight pence currency, for money by the said Bank loaned to him, the said Plaintiff, and having engaged to transfer to the said Bank two hundred and ten of the said two hundred and sixty-eight shares as collateral security for the due payment of such indebtedness and in order that the said Bank might realise the amount so due to them by the said Plaintiff out of the sale of the said two hundred and ten shares he, the said Plaintiff, did, in due form of law by an instrument in writing executed in duplicate on the said twenty-fifth day of November, eighteen hundred and fifty-three, transfer and sell to the said Bank the aforesaid two hundred and ten shares in the Capital Stock of the said Company Defendants; the whole on the understanding that the surplus of the proceeds of the sale of the said two hundred and ten shares, after deduction of the Plaintiff's said debt should be paid by them to the said Plaintiff.

That thereupon the said Bank duly demanded of the said Company Defendants, to transfer the said two hundred and ten shares of Stock on the Books of the said Company

Defendants, to the said Bank, and then and there also presented to the said Company Defendants the said transfer and offered to surrender the same, on the due execution of such transfer aforesaid on the Books of the said Company, but the said Company Defendants wholly neglected and refused to execute such transfer on the Books of the said Company: Whereupon afterwards, to wit: on the ninth day of December eighteen hundred and fifty-three, (the said Bank having in the meantime made similar verbal applications on several occasions but without effect, through the ministry of J. J. Gibb and his Colleague, Notaries Public,) the said Bank did formally reiterate their said demand to have the said two hundred and ten shares transferred, as aforesaid on the Books of the said Company Defendants, and did also then and there re-exhibit and re-offer to surrender the said transfer as aforesaid but the said Company Defendants still persisted in refusing to transfer the said two hundred and ten shares on the Books of the said Company, and thereupon the said Bank duly protested against the said Company for all costs, losses, damages, injuries and hurts had, suffered and sustained or which might thereafter be had, suffered and sustained in consequence of the premises. As the whole will more fully appear by reference to an authentic copy of such last mentioned Notarial demand and protest herewith produced and filed, and to which the said Plaintiff particularly refers, as forming part of these presents.

That in so refusing to transfer the said several shares on the Books of the said Company as aforesaid, said Company assigned no legal or sufficient ground for withholding such transfer and moreover had not any legal or sufficient ground or justification for so acting but on the contrary were bound and liable forthwith on the demands so made as aforesaid to transfer the said several shares on the Books of the said Company to the parties so demanding the same.

That at the said several periods when the said demands were so made as aforesaid, on the said Company Defendant, to transfer the said several shares of stock on the Books of the said Company, the said two hundred and sixty eight shares were worth in the Montreal Market and were readily saleable therein at eighteen per cent discount and that had the said Company Defendants transferred the said shares on the said Books of the said Company Defendants, as they were bound to have done, the said Lemesurier, Routh and Company and the said Bank who held the same as aforesaid in the interest of the said Plaintiff could have and would have sold and disposed of the same for an amount not less than five thousand, four hundred and ninety four pounds sterling or six thousand six hundred and eighty four pounds, seven shillings and four pence currency.

That notwithstanding all the foregoing premises the said Company Defendants still continued illegally to refuse to transfer on the Books of the said Company the aforesaid two hundred and sixty eight shares of the said stock, or any part thereof, until the fourth day of April, eighteen hundred and fifty four, when the said Company transferred on their said Books the aforesaid fifty eight shares in favor of the said Lemesurier, Routh and Company, and until the thirtieth day of May, eighteen hundred and fifty-four, when the said Company transferred the said two hundred and ten shares in favor of the said City and District Savings Bank of Montreal. That in the interim between the time when the said transfer on the Company's said Books was so originally demanded as aforesaid, and the respective dates last mentioned when the said transfer was so actually effected, the Capital stock of the said Company Defendants became and was so greatly depreciated in value that the only amount which the said Lemesurier, Routh and Company and the said Bank were enabled to obtain and realise for the said two hundred and sixty-eight shares of stock, which they caused to be sold with all reasonable and prudent despatch after the said transfers were so respectively made on the Books of the said Company as aforesaid, was, four thousand three hundred and fifty three pounds, four shillings and two pence currency, instead of six thousand six hundred and eighty four pounds, seven shillings and four pence currency, which they could easily have obtained and realised therefor, had they been allowed to have their said transfers recorded on the Company's said Books at the periods when the demands to that effect were first made as aforesaid; thereby causing a manifest loss to the said Plaintiff of at least two thousand three hundred and thirty one pounds, three shillings and two pence, currency, independently of loss of interest and costs of Protest and other damages incidentally suffered by him the said Plaintiff, by reason of the said illegal and unjustifiable acts of the said Company Defendants, which said loss of interest, cost of Protest and other incidental damages aforesaid the said Plaintiff estimates at six hundred and sixty eight pounds, sixteen shillings and ten pence currency.

That by reason of the said several premises and by law the said Plaintiff hath a right to recover from the said Company Defendants, the said two amounts last mentioned which form united three thousand pounds, currency.

Yet the said Company Defendants, although frequently requested to pay the said last mentioned sum of money hath hitherto wholly neglected and refused to pay the same or any part thereof.

Wherefore the said Plaintiff hereby declaring his option and choice of a trial by jury, brings suit and prays, that the said Company Defendants may be adjudged and condemned, to pay and satisfy to the said Plaintiff the said sum of three thousand pounds currency, together with interest thereon until paid and costs of suit.

(Signed,) BETHUNE & DUNKIN,
Attorneys for Plaintiffs.

Montreal, 23rd February, 1858.

Province of Canada,
DISTRICT OF MONTREAL. }

SUPERIOR COURT.

ARTHUR C. WEBSTER,

Plaintiff.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

Defendants.

The Defendants for *Defense au fonds en Droit* to Plaintiff's Action in this cause, not confessing or acknowledging any of the matters and things in the said Declaration set forth to be true, say that all the allegations matters and things in Plaintiff's Declaration contained are and each of them is wholly and altogether unfounded in law and not sufficient therein for the said Plaintiff to have or maintain against the said Defendants the conclusions in the said declaration taken or any or either of them or the action of the said Plaintiff in this behalf against the said Defendants and this they are ready to verify.

Wherefore the said Defendants humbly pray that by the Judgment of this Honorable Court, the said Plaintiff's Action be hence dismissed with costs, distraction whereof is prayed by the undersigned Attorneys.

(Signed.) CARTIER & BERTHELOT,
Defendants' Attys.

Montreal, 10th June, 1888.

Reasons or *moyens* alleged by the Defendants in support of the foregoing *Defense au fonds en Droit*:

1st. Because from the allegations of the Plaintiff's said declaration, it appears that the right to recover damages by reason of the alleged refusal of Defendants to transfer the shares in said declaration referred to (if any such right exist) is vested in the parties therein named as transferees of said shares to wit in the firm of Lemessurier, Routh and Co. and in the City and District Savings Bank and not in the said now Plaintiff, and because no demand by Plaintiff on the Defendants to transfer said stock is alleged in said declaration, or any legal cause or reason by which the Plaintiff can demand damages or recover the alleged loss referred to, by reason of a refusal to comply with the alleged demands made by the said transferees.

2dly. Because by the Law regulating the transfer of shares in the said Railway Company the Defendants, a form of transfer is provided, and it is thereby also provided that a duplicate of the transfer in the form so provided, should be delivered to the Directors of the said Company to be filed and kept for the use of the said Company and that an entry thereof should be made in a Book to be kept for that purpose, and because it is not in Plaintiff's declaration alleged that the transfer of the said shares was made in the form provided for and embodied in said Law, or that a duplicate thereof was delivered to the said Directors, and because the alleged offer to surrender the duplicate by the said transferees is not a sufficient compliance with said law, nor could such offer made by the said transferees avail or be pleaded by the said Plaintiff.

3dly. Because the pretended right of the Plaintiff to recover from the Defendants the same of money in Plaintiff's declaration referred to appears from the said declaration to rest upon alleged contracts with the said transferees and upon debts alleged to be due them by Plaintiff and on alleged transfers to them of said shares, as collateral security for said debts, and upon alleged demands and protests in respect of said shares and refusals by Defendants to comply with their said demands whereas by law, no such right is or can be by reason of said allegations, vested in the Plaintiff against the said Defendants, by reason of alleged contracts, debts and transactions between Plaintiff and the said transferees to which the Defendants are not alleged to have been privy, and because the refusal to comply with the said demands of said transferees in transferring said stock would confer on said transferees a right to a similar action against Defendants on their part and for their benefit but not upon the now Plaintiff.

4th. Because the alleged fall or depreciation in the price or value of said shares and the alleged incidental loss and damages in Plaintiff's declaration referred to, does not impose on Defendants any responsibility in law to pay Plaintiff for such alleged, diminution in value, damage or loss, in as much as the Plaintiff appears to have transferred and was by law obliged to transfer the said shares absolutely to the transferees for value paid and irrespective of the alleged understandings in Plaintiff's declaration mentioned, and because such pretended fall in the price or value of said stock is not nor can the same be taken or held as recoverable by Plaintiff from the Defendants, without allegations showing actual damage suffered by him by reason of his undertakings as Vendor or transferor to the said Vendees or transferees and in the quality of Vendor or transferor solely and not from any indirect interest in any surplus remaining over, after the application of said shares as collateral security in payment of said alleged debts, whereas no

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such allegations are in said declaration made, or any thing set forth to show that the Plaintiff was or is so held to said Vendees or transferees, or hath suffered and sustained any damage, legally, recoverable from Defendants.

5th. Because from the allegations of the Plaintiff's declaration the Plaintiff seeks to impose liability on Defendants grounded on an alleged interest in the shares in his declaration referred to not as absolute proprietor thereof or as an actual share-holder in Defendants' Company, but on the contrary arising from the peculiar nature of the understanding and alleged debts and transfer as collateral security for said debt, and on alleged demands by said transferees, whereas no such qualified and possible interest in any surplus from the proceeds of said shares can impose such liability on the Defendants or vest on the said Plaintiff as possessing such interest any right in law to the said sums of money claimed in this action, and because the said Plaintiff by his declaration seeks to recover the money demanded on the ground of such partial interest in the said shares or the proceeds thereof and by reason of the peculiar contracts aforesaid to which Defendants could not and are not alleged to have been parties.

6th. Because from the Plaintiff's Declaration, it appears that the alleged transfer of said shares were made to the transferees and the present action brought by the Plaintiff founded upon and with reference to contracts and with understandings peculiar to the relation of alleged debtors and creditors and to discretionary power in said transferees as to the form and mode of realizing said shares or even of holding them indefinitely and with power to the Plaintiff on payment of his debts to resume said Stock and that the said transfers originated in and were carried out in consequence of undertakings between the said parties that such transfers should be so made, and the said Plaintiff seeks to render the Defendants so liable as proprietor of the shares and as if the refusal to transfer had been made on his demand as such proprietor and also as if he, the said Plaintiff were liable over or had actually paid the damages which as such vendor or transferor he might have been liable to the transferees or vendees from not vesting the said shares fully and absolutely in said vendees or transferees by a registration in their name in the Defendants' Books as the owners of said shares.

7th. Because the Plaintiff hath not in and by his said Declaration set forth any loss or damage which he the said Plaintiff can legally claim or which he can recover from the Defendants by reason of the alleged refusal to transfer the shares in Plaintiff's Declaration referred to the transferees in said Declaration named and hath not alleged any loss or damage legally suffered by Plaintiff from or by reason of or directly or proximately arising out of any default or neglect of the Defendants in respect of or towards said Plaintiff.

(Signed,) CARTIER & BERTHELOT,
Defendants' Attorneys.

Montreal, 10th June, 1888.

And for *Defense en Droit*, or special demurrer to all that part of the Plaintiff's Declaration which relates to the City and District Saving's Bank therein named, to wit: to that portion thereof written on the third and fourth pages of said declaration and which is in the words following, to wit:—

"That on the twenty fifth day of November, eighteen hundred and fifty three, the said Plaintiff being indebted to 'The City and District Saving's Bank of Montreal,' in the sum of four thousand seven hundred and forty pounds, nine shillings and eight pence Currency, for money by the said Bank loaned to him the said Plaintiff and having engaged to transfer to the said Bank two hundred and ten of the said two hundred and sixty-eight shares as collateral security for the due payment of such indebtedness and in order that the said Bank might realize the amount so due to them by the said Plaintiff out of the sale of the said two hundred and ten shares, he the said Plaintiff did in due form of Law, by an instrument in writing executed in duplicate on the said twenty fifth day of November, eighteen hundred and fifty three, transfer and sell to the said Bank the aforesaid two hundred and ten shares in the Capital Stock of the said Company Defendants; the whole on the understanding that the surplus of the proceeds of the sale of the said two hundred and ten shares after deduction of the Plaintiff's said debt, should be paid by them to the said Plaintiff.

"That thereupon the said Bank duly demanded of the said Company Defendants, to transfer the said two hundred and ten shares of Stock on the Books of the said Company Defendants to the said Bank, and then and there also presented to the said Company Defendants, the said transfer and offered to surrender the same on the due execution of such transfer aforesaid on the Books of the said Company, but the said Company Defendants wholly neglected and refused to execute such transfer on the Books of the said Company. Whereupon afterwards, to wit: On the ninth day of December eighteen hundred and fifty three, (the said Bank having in the mean time made similar verbal applications on several occasions, but without effect), through the ministry of J. J. Gibb and his Colleague, Notaries Public, the said Bank did formally reiterate their said demand to have the said two hundred and ten shares transferred as aforesaid on the Books of the said Company Defendants, and did also then and there re-exhibit and re-offer to surrender the said transfer as aforesaid, but the said Company Defendants, still persisted in refusing to transfer the said two hundred and ten shares on the Books of the said Company and thereupon the said Bank duly protested against the said Company for all costs, losses, damages, injuries and hurts, had suffered and sustained or which might thereafter be had suffered and sustained in consequence of the premises, as the whole will more fully appear by reference to an authentic copy of

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"which the said Plaintiff particularly refers as forming a part of these presents."

The said Defendants say: That the said Plaintiff cannot have or maintain the conclusions of his said Declaration or any portion thereof by reason of the said allegations herein before mentioned, and that the said allegations are wholly insufficient in Law to sustain said conclusions or any part or portion thereof, and the said allegations and the said Plaintiff's said action so far as respects the same, ought by Law to be hence dismissed with costs because the said Defendants now pleading say:

1st. That by the public Law of this Province under which the said Saving's Bank was formed and hath ever since its formation, acted, the said Bank was and is a Corporation established for special purposes and with the powers and for the ends and purposes set forth in the said act under and in virtue whereof the said Bank was and is formed and is in existence as aforesaid, to wit: the Act of the Legislature of this Province passed in the session thereof in the fourth and fifth years of Her Majesty's Reign and intitled: "An Act to encourage the establishment of, and regulate Savings Bank in this Province," and the said Bank, under said Law had no power as such Corporation to become a share-holder in the Defendants' Company or in any Rail Road Company, nor were the Defendants bound in Law to transfer in their Books the said shares alleged, to have been transferred and made over to the said Bank, and the alleged matters in said portion of the said declaration set up could not vest in the said Bank the right to demand a transfer from the Defendants to the said Bank itself of the said shares.

2nd. Because the Statute regulating the transfer of shares in the said Defendants Company provides and specifies a form, under which form and by said Statute, all transferees must become and be in so far as respects the Defendants and all share-holders in said Company, the absolute proprietors of the Stock transferred and all share-holders in said Company, and because from and by reason of the allegations in Plaintiff's declaration contained and from and by reason of the said Act and the Law under which the said Saving's Bank at the date of said alleged transfer to said Bank and at the date of said demand and protest had and still has existence and being as a Corporation and Bank as aforesaid, the said Bank could not be or become such absolute proprietor of said Stock or a share-holder in said Company or become or be incorporated with or be a member or Stock-holder in said Company, nor could the Defendants validly perfect the said alleged transfer in the manner in which, said transfer is alleged to have been made in and by said declaration.

Wherefore the said Defendants pray that the said portion of the said declaration be declared to be insufficient in Law, and that Plaintiff's said action in so far as respects the said allegations hereby demurred to, be dismissed with costs, distraction whereof is prayed by the undersigned Attorneys.

(Signed,) CARTIER & BERTHELOT,
Defendants' Attorneys.

Montreal, 10th June, 1855.

APPENDIX.

The 28th June 1855.

PRESENT:

The Honorable Mr. JUSTICE DAY.

The parties being heard by their Counsel on the Law, issued raised by the *défense au fonds en droit* firstly filed by the Defendants to the action and the *demande* of the said Plaintiff having examined the proceedings the declaration and the said pleading and deliberated, considering that by virtue of the transfer and the assignment by the Plaintiff of the shares in the Capital Stock in the declaration to this cause, set forth to the said Lemesurier, Routh and Company, and to the said City and District Savings Bank of Montreal, and by law he, the Plaintiff ceased to hold any legal title to or in the said shares of Capital Stock as owner thereof and the Defendant cannot by reason of the alleged depreciation in the value of the said Capital Stock after the date of the said transfer and assignment or of any other of the causes and matters in his said declaration set forth be held liable to him the said Plaintiff for any damages or sum of money in manner and form as he the said Plaintiff hath in and by his said declaration prayed, maintaining the said *défense au fonds en droit* doth dismiss the said action with costs distracts for Messrs. Cartier & Berthelot, the Attorneys for the Defendant.

(Signed,) MONK, COFFIN & PAPINEAU.

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Province of Canada, }
DISTRICT OF MONTREAL.

In the Queen's Bench.

APPEAL SIDE.

ARTHUR C. WEBSTER,

Plaintiff Below,

Appellant,

vs.

THE GRAND TRUNK RAILWAY COMPANY,

Defendants Below,

Respondents.

RESPONDENT'S CASE.

The Judgment which forms the subject matter of this appeal dismissed the action of the Plaintiff below on a *defense en droit* filed by the Defendants to the declaration. These pleadings are copied in the Appendix together with the Judgment appealed from and the precise positions of the parties will be evident on examination of these documents.

The declaration of the Plaintiff contained allegations to the following effect :

That on the 1st October 1863, the Appellant was owner of 268 shares of the value of £25 sterling each, in the stock of the Grand Trunk Railway Company, and was then indebted to the firm of Lemesurier, Routh, and Company, in the sum of £1403 15 7, and that having "engaged" to transfer 58 of these shares as collateral security for the debt, he the Plaintiff did on the 1st day of October 1863, by writing in duplicate, transfer and sell to Lemesurier, Routh and Company, the 58 shares, "on this understanding" that the surplus after payment of the debt should be returned to the Plaintiff.

That thereupon Lemesurier, Routh and Company demanded of the Company to execute a transfer of those fifty-eight shares in the Company's Books, and presented and offered to surrender "the transfer;" the refusal of the Company to execute the transfer in the Books of the Company; protest of Lemesurier, Routh and Company on the 24th December 1863 reiterating the demand of transfer and the offer to surrender.

Then follow allegations in similar terms, setting up the indebtedness of the Plaintiff to "The City and District Savings Bank" in the sum of £4750 0 8; the engagement to transfer to the Bank 210 of the 268 shares as collateral security for the debt due to the Bank, the transfer in duplicate of the twenty-fifth November 1863 on the understanding referred to;—the presentation and demand and refusal to transfer;—the protest by the Bank on the 9th December 1863. That the Company was bound forthwith to have made the transfers "to the parties so demanding the same" but refused and alleged no sufficient ground for the refusal; and that at the date of the demand, the 25 shares were worth in the market 18 per cent discount; and that if the transfers had been made, Lemesurier and Company and the Bank could and would have sold the 268 shares for £2684 7 4 cy. and that between the dates of the demands and transfer of the shares by the Company on their Books (namely on the 4th April 1864 for the 58 shares; and 13th May 1864 for the 210 shares), the stock had depreciated; and that the only amount which Lemesurier and Company and the Bank were enabled to obtain for the stock which they caused to be sold "with all reasonable and prudent despatch" after the transfer had been made by the Company was £4358 4 3 cy. "thereby causing a manifest loss to the Plaintiff of £2331 8 9 cy." independent of loss of interest, costs of protest and other damages estimated at £665 16 10 currency; and that by reason of the premises and by law, the Plaintiff had a right to recover these two sums making together £3000 currency, for which Judgment is prayed.

To this action, the Defendants pleaded :

1st. A *defense au fonds en droit* to the whole action;

2dly. A special demurrer to that part of the action relating to the Savings Bank;

3dly. A peremptory exception;

4th. A *defense au fonds en fait*.

The issues having been perfected, and the case having been heard on the law issues, the Court maintained the *defense en droit* filed to the declaration and dismissed the Plaintiff's action (see Judgment copied in the Appendix).

The reasons given by the Honorable Judge in rendering the Judgment were to the following effect:

DAY Justice. "This is an action by a former Stockholder of the Grand Trunk Railway Company for money in the form of damages, in consequence of the Defendants refusal to transfer in their register certain shares sold by the Plaintiff, it being alleged that the shares depreciated in value, between the date of the demand of registration, and the date of the actual registry.

"The Plaintiff sets out that he was a proprietor of a certain number of shares of the Company's Stock, part of which he transferred to Lemesurier, Routh and Company, and part to the Saving's Bank as collateral security for debts due to them, they the creditors being obliged in the case of sale of the stock to pay back to Plaintiff any surplus after payment of the debts secured,—that these creditors applied to get the transfer "executed in the Company's Books" that the Company refused,—and that they could not sell the stock until some time afterwards, when the stock had depreciated. The Defendants pleaded a *defense en droit* to the action by which two principal questions are substantially raised.

1st. "That the Plaintiff could not call upon the Company, to make good any loss not having shown a compliance with the Statute of the Company as to the form of the transfer and registry.

2nd. "That having parted with his stock, he ceased to have a right of property in it, so as to support the action as brought; the right of action, under the circumstances, being vested in Lemesurier, Routh and Company and the Bank, as creditors in consequence of the demand made by them for the registration and the protests for the refusal; and that the agreements between Plaintiff and his creditors could not affect the Company.

"There is a special demurrer to the part of this action setting forth the transfer to the Saving's Bank, on which demurrer I am against the Defendants. As to the *defense en droit* to the declaration, I am against the Plaintiff. Having parted with his stock he ceased to be a stockholder, and it was incumbent on the proprietors of it to take proceedings against the Company to obtain the necessary registration. They had a right of action or might have taken proceedings by *mandamus* to compel the registration. They did not adopt those means. It is true they made a demand of registry, they protested by reason of the refusal, but they received the registration when made. Now the Plaintiff comes in and says: "I made certain agreements as to qualified transfers of the stock, which were not carried out." But as between the Plaintiff and his creditors any agreement as to a conditioned and qualified transfer might be made; but the Defendants were not bound by any such conditions or restrictions. Every transfer, so far as they are concerned, must be absolute. Here there is no allegation that the Plaintiff demanded the registry of the transfer, or that he protested by reason of the refusal. He wishes to treat the demand of the creditors as being his demand under the "special agreements" set forth without alleging "that he was liable to the creditors or had paid them any damages suffered by reason of" his, the Plaintiff's failure to get a complete transfer made."

"There are other difficulties in the way."

"The declaration sets out that the Company were notified and required "to transfer the shares in the Books of the Company." Now they were not bound to make such transfer. By the Railway Clauses, Consolidation Act 14 & 15 Victoria ch. 51 sect. 17, a form of transfer is provided which must be made in duplicate "one part of which shall be delivered to the Directors to be filed and kept for the use of the Company, and an entry thereof shall be made in a Book to be kept for that purpose." The declaration does not say that a duplicate was delivered to the Directors, but that "the parties presented the transfer and offered to surrender the same, on the due execution of such transfer aforesaid on the Books of the said Company but that the said Company wholly neglected and refused to execute such transfer on the Books of the said Company." A party suing for breach of Statute must allege the very breach set forth in the Statute and in its terms. "The noting of the transfer by the Company in their Book could only be legally made after the delivery of the duplicate. It is not the duty of the Company to execute or to make any transfer, but first to receive the duplicate and then make an entry of the transfer indicated by the duplicate."

It is submitted by the respondents that the declaration clearly shows that the transfers to his creditors were simply as collateral security, for debts due by him to the transferees, and that they were made under special engagements or agreements between him and them, and on understandings as to the application of any surplus arising from the sale of the shares, if the shares were actually sold. To these agreements and understandings the respondents were no parties; and they cannot, therefore he held responsible for alleged depreciation in value, or even for damage arising from these engagements and understandings, as between the Plaintiff and the Respondents the relation was simply that of stockholder and Company. The special reasons which induced and justified the Directors to delay the Registration of the shares do not come up at the present stage of the case. It is not denied that a stockholder may transfer his shares, and that the Directors were bound to register the transfer on compliance with the formalities required by law. If they refuse to register when these formalities are complied with, the Stockholder, from the very relation of stockholder has his recourse against the Directors to recover the value of the stock, or against the officer whose duty it was to note the transfer in the Company's Books to

the law issues, the Plaintiff's claim was to the Grand Trunk the Defendants being alleged registration, and of shares of the Company, and they the creditors any surplus after transfer "executed could not sell the The Defendants are substantially good any loss not form of the trans- of property in it, instances, being consequence of refusal; and that company, e transfer to the the defense on with his stock he to take proceed- a right of action. They did not ented by reason Plaintiff comes stock, which were agreement as to a are not bound by concerned, must be the transfer of the demand of the without alleging red by reason of red "to transfer make such trans- sect. 17, a form ch shall be deli- ty, and an entry aration does not e presented the h transfer afore- holly neglected A party suing and in its terms. ally made after cule or to make the transfer in- ent the transfers he transferees, ween him and from the sale of eretandings the ble for alleged and understand- nt of stock-hol- rectors to delay case. It is not re bound to re- y refuse to re- very relation of of the stock, or ny's Books to

compel such entry. But this is not the action brought. The Plaintiff by his action might have said, "I was a stock-holder and transferred my shares in conformity with the law. "I made an absolute transfer which the Directors were in law bound to register in their "Books but refused to do so; pay me the value of my stock and the direct damage "resulting from your refusal."

Or the action might have been founded on allegations that the Plaintiff was a stock-holder and transferred his stock in due form and demanded its registration which was refused, that as vendor he had been held liable to his transferee for special damages, suffered by the vendor from the breach of the contract of sale which damages, the Plaintiff as transferee, or vendor was obliged to pay and had paid; that therefore in as much as the Company had caused, although indirectly, the damage by their refusal to complete the transfer, they were bound to indemnify the Plaintiff to the extent of the loss.

But the action as actually brought is neither that of a stock-holder as such, or a stock-holder held liable as vendee. It is rather an action founded on special agreements and understandings between a debtor and his creditors without allegation of damage directly arising either to him as a stock-holder or as vendee.

By his action, the Plaintiff in effect says: "I was a debtor to A. & B. and transferred my shares to them, under agreements to that effect, and as collateral security for "their debt, with an understanding that the surplus of the stock, if sold, should be handed "back; they demanded of you to execute a transfer in the Company's Books which you "refused to do, and they held the stock for six months after the transfer and sold it with "all "reasonable and prudent despatch," after such demand; but in the interim, the value "of the stock fell 18 per cent which I claim to recover."

Now, this per centage if it can be claimed at all as damage, might be claimed up to any indefinite period. From the allegations of the declaration it is manifest that the transfers were made as collateral security, and the creditors were under no obligation from any thing that is alleged, to sell or realize the stock at all or at any specific period.

The collateral security might therefore have been held until the payment of the debts secured; and as between Plaintiff and his creditors there could be no damage occasioned by holding the stock so long as any part of the debt was unpaid. The debtor's right was to pay the debt and to get back the stock; but here again the debtor might select his own time, a time with which the Defendants had nothing to do.

It appears that the stock was sold by the creditors, but it is not said when, or in what manner it was sold, and hence the liability for the alleged depreciation would appear to be dependant on contracts to which the respondents were no party and over which they had no control. As to the allegation of damage arising from loss of interest, costs of protest, and incidental damage, it will be seen that these are incidental to the contracts set up between the Plaintiff and his creditors. The only protests set forth are protests made by them, not by the Plaintiff, and no *Enquete* could have been had upon these allegations made as apart from the main allegations set up as to the damage by the depreciation of the value of the stock.

It is respectfully submitted that the reasons or *motifs* in support of the *défense en droit* are in law sufficient to justify and to support the Judgment as rendered in the Court below; that the right to demand the registration of the shares in the Company's Books was vested in Lemesurier, Routh and Company, and in the Saving's Bank;—that they alone had the right to complain of the delay;—that their recourse should have been by *mandamus* to compel the registration of the transfer, or in damages against the Directors for illegally retarding the registration and not against the Company;—that the Plaintiff's interest in the stock which amounted only to an interest in the surplus after payment of the debts, is not such an interest as to bind the Respondents;—that even if the Plaintiff has a right of action against the Company for the acts of the Directors, the Plaintiff has not alleged the breach of the Statute or of any duty such as is imposed on the Directors, and that the damages sought to be recovered are shown by the declaration not to be such as by law recoverable under the circumstances of the case.

CARTIER & BERTHELOT,

Attorneys for Respondents.

Montreal, 10th November, 1858.